



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2011-0502; FRL-9763-1]

Approval and Promulgation of Air Quality Implementation Plans;

Wisconsin; Disapproval of PM_{2.5} Permitting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a revision to Wisconsin's State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) in a letter dated May 12, 2011. The revision concerns permitting requirements relating to particulate matter of less than 2.5 micrometers (PM_{2.5}). EPA is proposing to disapprove the revisions because they do not meet the 2008 PM_{2.5} SIP requirements.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2011-0502, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: damico.genevieve@epa.gov.
3. Fax: (312)385-5501.
4. Mail: Genevieve Damico, Chief, Air Permits Section, Air

Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. Hand Delivery: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2011-0502. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in

the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the SUPPLEMENTARY INFORMATION section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West

Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andrea Morgan, Environmental Engineer, at (312) 353-6058 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6058, morgan.andrea@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Should I Consider as I Prepare My Comments for EPA?
- II. The State's Submittal
- III. Does This Submittal Comply with Federal Regulations?
- IV. What Action Is EPA Taking on This Submittal?
- V. Statutory and Executive Order Reviews.

I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

- 1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).

2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. The State's Submittal

In May 2008, EPA finalized regulations to implement the New Source Review (NSR) Implementation Rule for PM_{2.5} to include the major source threshold, significant emissions rate and offset ratios for PM_{2.5}, interpollutant trading for offsets and applicability of NSR to PM_{2.5} precursors. On October 20, 2010, EPA amended the requirements for PM_{2.5} under the Prevention of

Significant Deterioration (PSD) program by adding maximum allowable increase in ambient pollutant concentrations and screening tools known as the Significant Impact Levels and Significant Monitoring Concentration (SMC) for PM_{2.5}.

On May 12, 2011, Wisconsin requested a revision to its SIP to include new permit requirements relating to PM_{2.5}. The provisions were designed to match the requirements set forth in the May 2008 and October 2010 rules. Wisconsin submitted revisions to its rules NR 400, 404, 405, 406, 407, 408, and 484 of the Wisconsin Administrative Code. The submittal requests that EPA approve the following revisions to Wisconsin's SIP: (1) amend NR 400.02 (40), (70), and (79); (2) create NR 400.02(123m); (3) amend NR 400.02(135); (4) create NR 400.03(4)(ki); (5) renumber and amend NR 404.02(4e) and (4m); (6) amend NR 405.02(25k)(intro.); (7) create NR 405.02(27)(a)5m in Table A; (8) amend NR 405.07(8)(a)3m; (9) amend NR 406.04(1)(n)(intro) and 1. and 2. (intro); (10) create NR 406.04(2)(cs); (11) create NR 407.03(2)(be); (12) create NR 408.02(32)(a)5m; (13) create NR 408.06(1)(cm); (14) amend NR 484.03(5) in Table 1; (15) and amend NR 484.04(5) and (6g) in Table 2.

The submittal included permanent rules to define major source thresholds and significant emission increase levels; establish

the SMC for PM_{2.5}; establish interpollutant trading ratios for PM_{2.5}, sulfur dioxide (SO₂) and nitrogen oxides (NO_x); and clarify existing nonattainment area permitting rules. EPA announced through a memorandum, on July 21, 2011, a change in its policy concerning the development and adoption of interpollutant trading provisions for PM_{2.5}. The new policy requires that any ratio involving PM_{2.5} precursors submitted to EPA for approval for use in a state's interpollutant offset program for PM_{2.5} nonattainment areas must be accompanied by a technical demonstration that shows the net air quality benefits of such a ratio for the PM_{2.5} nonattainment area in which it will be applied. In a letter dated March 5, 2012, WDNR requested to withdraw its request to have NR 408.06(1)(cm), the provision pertaining to interpollutant trading ratios, included in its 2011 submittal.

NR 400 contains Wisconsin's air pollution control definitions and the following revisions to NR 400 were submitted. NR 400.01 (40), (70), and (79) and NR 400.02 (135) were revised to clarify existing rules by updating references within the rule. These amendments do not change the effect or intent of these rules. NR 400.02(123m) created a definition of "PM_{2.5} emissions". NR 400.03(4)(ki) created a definition for "PM_{2.5}".

NR 404 contains Wisconsin's Ambient Air Quality requirements, and the following revision to NR 404 was submitted. NR 404.02 (4e) and (4m) were renumbered to NR 400.02(123e) and (123s) and were revised to clarify the definitions of "PM_{2.5}" and "particulate matter of less than 10 micrometers" (PM₁₀).

NR 405 contains Wisconsin's PSD program requirements, and the following revisions to NR 405 were submitted. NR 405.02(25k)(intro) was amended to clarify language. NR 405.02(27)(a)5m in Table A was created to include the 10 tons per year (tpy) significance thresholds for PM_{2.5}, and 40 tpy threshold for NO_x and SO₂, the precursors to PM_{2.5}. The inclusion of these significance values would cause sources for which annual emissions exceed the significance value to trigger the PSD program requirements. NR 405.07(8)(a)3m was created to exempt major sources from the monitoring requirements for PM_{2.5} of NR 405.11 if one of the following criteria are met: (a) The emissions increase of PM_{2.5} from a new stationary source or the net emissions increase of the PM_{2.5} from a major modification would cause, in any area, air quality impacts less than 2.3 mg/m³, 24 hour average; (b) The concentration of PM_{2.5} in the area that the source or modification would affect is less than 2.3 mg/m³.

NR 406 contains Wisconsin's construction permitting requirements, and the following revisions to NR 406 were submitted. NR 406(1)(n), NR 406(1)(n)1 and NR 406(1)(n)2 were amended to clarify otherwise unaffected existing rules. These changes do not change the effect or intent of the rule. NR 406.04(2)(cs) was created to exempt sources with a maximum theoretical emission for PM_{2.5} of less than 2.2 pounds per hour from obtaining a construction permit.

NR 407 contains Wisconsin's operation permit requirements, and WDNR submitted NR 407.03(2)(be) to require any source with a maximum theoretical emissions of PM_{2.5} greater than 2.2 pounds per hour to obtain an operation permit.

NR section 408 contains Wisconsin's requirements for construction permits in nonattainment areas and WDNR included NR 408.02(32)(a)5m in its submission. NR 408.02(32)(a)5m defined "Significant", in reference to a net emissions increase or the potential of a source to emit any of PM_{2.5}, as a rate of emissions that would equal or exceed 10 tpy of PM_{2.5} emissions or 40 tpy of NO_x or SO₂. While the original submittal requested to create NR 408.06(1)(cm), Wisconsin withdrew the request to include this provision from the SIP approval in a letter dated March 5, 2012.

NR 484 contains those parts of Wisconsin's regulations that

are incorporated by reference from the regulations. Wisconsin submitted a request to amend NR 484.03(5) in Table 1 and NR 484.04(5) and (6g) in Table 2. The updates would correct citations in the Wisconsin SIP so that they are up to date with Wisconsin's current regulations.

III. Does This Submittal Comply with Federal Regulations?

EPA has evaluated WDNR's proposed revisions to the Wisconsin SIP in accordance with the Federal requirements governing state permitting programs. The revisions described in Section II above are intended to update the Wisconsin SIP to comply with current rules. As discussed below, EPA is proposing to disapprove these revisions because they do not meet all the requirements of the 2008 rules.

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in $PM_{2.5}$ and PM_{10} emission limits in NSR permits. Instead, EPA determined that states had to account for $PM_{2.5}$ and PM_{10} condensables beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(vi) and 40 CFR 52.21(b)(50)(vi). Revisions to states' PSD programs incorporating the inclusion of condensables were required to be submitted to EPA by May 16, 2011 (see 73 FR 28321 at 28341).

WDNR's revision to NR 400.03(4)(ki) provides the definition of "PM_{2.5}" as particulate matter with an aerodynamic diameter \leq 2.5 μ m" and NR 400.02(123e) defines "PM_{2.5}" as "particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured in the ambient air by a reference method based on appendix L of 40 CFR part 50, incorporated by reference in NR 484.04(6g), and designated in accordance with 40 CFR part 53, incorporated by reference in NR 484.03(5), or by an equivalent method." Similarly, the requested revisions do not include the explicit language identifying PM₁₀ and PM_{2.5} condensables. EPA recognizes that Wisconsin Administrative Code NR 439 contains the requirements for reporting, recordkeeping, testing, inspection, and determination of compliance for air contaminant sources and their owners and operators. Of note, NR 439.02(4) defines "condensable particulate matter" as "any material, except uncombined water, that may not be collected in the front half of the particulate emission sampling train but which exists as a solid or liquid at standard conditions." While this definition is SIP approved, it was only approved as it applies to Wisconsin Administrative Code NR 419 to NR 425. Wisconsin's permitting requirements are codified in NR 405 to 408. Further, EPA regulations require that permitting requirements contain the explicit language that, "Particulate

matter (PM) emissions, PM_{2.5} emissions, and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures." Wisconsin's current SIP does not contain the explicit language to account for PM_{2.5} and PM₁₀ condensables in permitting decisions, as codified in 51.166(b)(49)(vi) and 40 CFR 52.21(b)(50)(vi), and to date, the State has not made a submission with such revisions.

WDNR's revisions to NR 405.02(27)(a)(5) include the significant emissions rates for direct PM_{2.5}, and SO₂ and NO_x as PM_{2.5} precursors, consistent with the 2008 NSR Rule. However, Wisconsin's PSD regulations include only generic language to define what constitutes a regulated NSR pollutant that does not directly account for PM_{2.5} and its precursors. NR 405(02)(25i) defines "Regulated NSR air contaminant" as "Any air contaminant for which a national ambient air quality standard has been promulgated and any constituents or precursors for the air contaminants identified by the administrator . . . ". The 2008 NSR Rule obligates the State to explicitly identify the precursors to PM_{2.5} as part of the definition for "Regulated NSR air contaminant." EPA concludes that although Wisconsin has incorporated the significant emissions rates in accordance with the 2008 NSR Rule, WDNR has not explicitly identified SO₂ and NO_x

as precursors to PM_{2.5} in defining pollutants regulated by the PSD program.

Since the proposed revision to Wisconsin's SIP does not include the prescribed language required for the identification of precursors and does not account for PM_{2.5} or PM₁₀ condensables, EPA proposes to disapprove the submitted revisions. EPA's proposed action is consistent with the narrow disapproval of the infrastructure requirements published on October 29, 2012 (77 FR 65478). The infrastructure SIP was disapproved in part because of the deficiencies with regards to the identification of precursors to PM_{2.5} and PM_{2.5} and PM₁₀ condensables.

IV. What Action Is EPA Taking on This Submittal?

EPA is proposing to disapprove the revisions to Wisconsin rules NR 400, 404, 405, 406, 407, 408 and 484, submitted by the State on May 12, 2011, for approval into the SIP. The rule revisions submitted, described in Section II, above, are not consistent with Federal regulations governing state permitting programs. See Section III, above. EPA is also soliciting comment on this proposed disapproval.

Under section 179(a) of the Clean Air Act (CAA), final disapproval of a submission that addresses a requirement of a part D plan (section 171–193 of the CAA), or is required in response to a finding of substantial inadequacy as described in

section 110(k)(5), starts a sanction clock. The submission EPA is proposing to disapprove was not submitted to meet either of these requirements. Therefore if EPA takes final action to disapprove these submissions, no sanctions under 179 will be triggered.

The full or partial disapproval of a SIP revision triggers the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the state corrects the deficiency, and the Administrator approves the plan or plan revision before the Administrator promulgates such FIP. However, since elements of this SIP revision were narrowly disapproved under the infrastructure SIP, the two year timeframe began with the final narrow disapproval of Wisconsin's Infrastructure SIP (October 29, 2012; 77 FR 65478). EPA will actively work with Wisconsin to incorporate changes to its PSD program that explicitly identify PM_{2.5} precursors and account for PM_{2.5} and PM₁₀ condensables in permitting emissions limits, consistent with the 2008 NSR Rule. In the interim, EPA expects WDNR to adhere to the associated requirements of the 2008 NSR Rule in its PSD program, specifically with respect to the explicit identification of PM_{2.5} precursors, and accounting for PM_{2.5} and PM₁₀ condensables in permitting emissions limits.

V. Statutory and Executive Order Reviews.

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely disapproves state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule disapproves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely disapproves a state rule, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it disapproves a state rule.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Particulate matter, Reporting and
recordkeeping requirements, Sulfur oxides.

Dated: December 10, 2012.

Susan Hedman,
Regional Administrator, Region 5.

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